

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DMJ ASSOCIATES, L.L.C.,

Plaintiff,

-against-

CV-97-7285 (Irizarry, J.) (Levy, M.J.)

CARL A. CAPASSO, et al.,

ORAL ARGUMENT REQUESTED

Defendants.

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EXXON MOBIL CORPORATION and
QUANTA RESOURCES CORPORATION,

Defendants/ Third-
Party Plaintiffs,

-against.-

ACE WASTE OIL, INC., et al.,

Third-Party

Defendants.

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**DECLARATION OF GORDON J. JOHNSON IN
SUPPORT OF NEW YORK CITY TRANSIT'S
MOTION TO DISMISS THE FOURTH AMENDED
THIRD-PARTY COMPLAINT**

Gordon J. Johnson, pursuant to 28 U.S.C. § 1746, hereby declares:

1. I am a Deputy General Counsel at the Metropolitan Transportation Authority (“MTA”) and am one of the attorneys representing the MTA affiliate, Third-Party Defendant New York City Transit Authority (“NYCT”), in the third-party action. As such, I am familiar with the proceedings in this case. I submit this declaration in connection with NYCT’s motion pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss the Fourth Amended Third-Party

Complaint in its entirety, or alternatively to dismiss Third-Party Plaintiff Quanta Resources Corporation's claim for contribution (Count II).

2. For the convenience of the Court, attached are true copies of the following documents heretofore filed with the Court that are pertinent to the motion:

a. **Exhibit 1.** The Fourth Amended Third-Party Complaint (Doc.# 1471, filed 10/21/13),

which includes as Exhibit A thereto the Fourth Amended Complaint in the underlying action (Doc. # 792, filed 6/16/05).

b. **Exhibit 2.** The 2002 Consent Decree executed by the New York State Department of Environmental Conservation and a group of Respondents including Third-Party Plaintiffs (Doc. # 1444-1, filed 8/19/13).

c. **Exhibit 3.** The 2005 Order and Judgment of Dismissal (Doc. # 798, filed 6/27/05); and

d. **Exhibit 4.** A letter, heretofore filed as Exhibit H to the Declaration of Allan G. Reiter in Support of Third-Party Plaintiffs' Motion for Leave to Add a Party and File Their Fourth Amended Third Party Complaint, dated July 31, 2013, which letter allegedly was sent "to 'opt out' of obligations" of the 2002 Consent Order by entering into the State's Brownfield Program. (Doc. # 1441-9, filed 7/31/13).

3. NYCT also has referenced briefs filed in connection with two motions that are sub judice. See NYCT's memorandum of Law, filed herewith, at Points II and III. Because those motions are sub judice and NYCT has not repeated or added to the arguments made therein, the Court is respectfully referred to those briefs for the grounds in support of Points II and III of the instant motion to dismiss.

I declare under penalty of perjury that the foregoing is true and correct. Executed
November 26, 2013.

s/ Gordon J. Johnson

GORDON J. JOHNSON